

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

THE BERKSHIRE GAS COMPANY

D.T.E. 01-91

OFFER OF SETTLEMENT

This Offer of Settlement ("Settlement") is entered into this 19th day of December, 2001 by and between The Berkshire Gas Company ("Berkshire" or the "Company") and the Commonwealth of Massachusetts Division of Energy Resources ("DOER"), for the purpose of resolving all issues that were raised in connection with the above-captioned proceeding. Berkshire and DOER are collectively referred to herein as the "Settling Parties." Pursuant to 220 C.M.R. § 1.10(8), the Settling Parties stipulate to the following:

1. On November 1, 2001, pursuant to G.L.c. 164 App., §§ 2-1 through 2-10 and 220 C.M.R. §§ 7.00 et seq., Berkshire filed with the Department of Telecommunications and Energy ("Department") a petition for approval by the Department of the Company's proposed operating budget of \$95,242 and applicable monthly surcharge of \$0.27 per monthly bill for the residential energy conservation service ("RCS") program for the calendar year January 1, 2002 through December 31, 2002 ("CY 2002").

2. Pursuant to G.L.c. 164 App., §§ 2-1 through 2-10 DOER must adopt a state plan and promulgate regulations necessary to implement that plan. DOER is responsible for (a) establishing residential energy and conservation goals; (b) establishing RCS program guidelines; (c) monitoring the implementation of the program requirements; and (d) overseeing the implementation of the state plan, historically by approving a utility implementation plan ("UIP"). DOER has implemented the redesign of the RCS program, including the amendment of its RCS regulations at 225 CMR 4.00 et seq. In lieu of a UIP, the DOER has approved a statewide RCS Coalition Action Plan ("CAP") for CY 2002. The DOER has also established certain company-specific addenda to the generic CAP setting forth certain company-specific targets for implementation of the RCS program during CY 2002. The Company's RCS budget filing of November 1, 2001 incorporates and is consistent with the CAP and the Company-specific addendum thereto.

3. In support of this Offer of Settlement, the Settling Parties hereby incorporate into this Settlement the exhibits Berkshire filed with the Department on November 1st in support of its proposed budget and surcharge, i.e., Exh. Berk-A (Initial Petition); Exh. Berk-B (Exhibits 1-10 of November 1, 2001 Filing); and Exh. Berk-C (the testimony and schedules of Michael J. Sommer).

4. DOER has received and reviewed Berkshire's CY 2002 budget filing and finds that Berkshire's proposed budget is adequate to support the activities contemplated during CY-2002.

5. Berkshire's RCS budget filing complies with the requirements established in G.L.c. 164 App., §§ 2-1 through 2-10; 220 C.M.R. §§ 7.00 et seq.; and the filing requirements set forth in Mass. Save, Inc., D.P.U. 85-189 (1985).

6. Berkshire's actual expenses for the first nine months of calendar year 2001 (CY-2001) were \$80,362 and are reasonable and therefore recoverable from ratepayers (Exh. Berk-2, Exh. 8, Attachment 8-A). Berkshire's filing also demonstrates that its actual expenditures for the last three months of calendar year 2000 are similarly reasonable and recoverable. Id. at Tab 8-A(b). The Settling Parties agree that the Department will review the Company's actual expenditures for the final three months of CY 2001 in the next annual RCS budget review.

7. Berkshire's CY 2002 budget projections are good faith estimates based on the estimates approved for CY 2001 and actual in-field experience during CY-2001. These twelve-month estimated expenditures for CY 2002 are reasonable and recoverable from the ratepayers. Funding the budget at this level helps to assure the successful implementation of the redesigned RCS program.

8. Given the unique circumstances of this initial year for the implementation of the redesigned RCS program, the Company will continue to cooperate with DOER in 2002 in refining the reform of the RCS program.

9. The Settling Parties hereby further agree and clarify that: a) Berkshire will participate in, and fund (using RCS funds, based on a prorated statewide allocation) a portion of a statewide RCS evaluation study contemplated to be performed in CY-2002; b) Berkshire will update by April 1, 2002, Exh. Berk-B, Exhibit 3 (description of RCS program components and their relationship with DOER goals) and Exhibit 5-B (vendor tasks) in order to more fully reflect the redesigned RCS program; c) Berkshire agrees to update its discussion of its auditor incentive structure referenced in Exh. Berk-B, Exhibit 5B by April 1, 2002 to reflect the elimination of the self generated audit incentive; and d) Berkshire is making approximately \$124,000 of funding available in CY-2002 through its residential demand-side management programs approved in The Berkshire Gas Company, D.T.E. 01-29 (2001). None of the foregoing agreements or clarifications involves expenditure of material funds that would require change to the RCS budget filed by Berkshire on November 1, 2001.

10. The Company calculated its RCS surcharge by dividing the total number of bills expected to be rendered during CY 2002 by the net amount to be collected to support RCS services and factoring in an adjustment with respect to past expenditures and collections. (Exh. Berk-C, Surcharge Calculation Sheet dated October 30, 2001). The RCS surcharge to be applied to the Company's bills during CY 2002 shall be \$0.27 per bill per month. This surcharge reasonably compares with the surcharge of \$0.23 per bill per month approved by the Department in The Berkshire Gas Company, D.T.E. 00-86 (December 22, 2000) for CY 2001.

11. Berkshire's proposed CY 2002 RCS program budget, budget reconciliations, and proposed CY 2002 surcharge, are reasonable.

12. The making of this Settlement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in these proceedings is true or valid.

13. This Settlement is expressly conditioned upon the Department's acceptance of all of its provisions, without change or condition on or before December 31, 2001, and if the Department does not accept it in its entirety, without change or condition, the Settlement shall be deemed to be null and void and without effect, and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

14. The Department's acceptance of this Settlement does not constitute continuing approval of, or precedent regarding, any particular issue in this proceeding, but such acceptance does constitute a determination that, as the Settling Parties believe, the provisions set forth herein are just and reasonable.

15. The discussions which have produced this Settlement have been conducted on the understanding that all offers of settlement and discussion relating thereto are and shall be privileged, and shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding, any further proceeding or otherwise.

Wherefore, the Settling Parties agree to jointly petition the Department to approve this Offer of Settlement by submitting a Joint Motion for Approval of Offer of Settlement in accordance with 220 C.M.R. § 1.10(8), and by their attorneys do hereunto affix their names.

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